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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,661	10/26/2001	Alfred Blalock Bahnson	HOUCK-9	6166

7590

04/09/2003

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EXAMINER

SIEFKE, SAMUEL P

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 04/09/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/032,661

Applicant(s)

BAHNSON ET AL.

Examiner

Samuel P Siefke

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 1,2 and 12-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group II, claims 3-11 in Paper No. 7 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear as to the use of viable light, Examiner is assuming applicant intends to use visible light.

Claim 9 recites the limitation "the kinetic information " in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 9 is dependent from claim 6 but claim 6 does not have kinetic information recited. Examiner suggests depending claim 9 from 8.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 3-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Bahnson (Pub. No. 2003/0017522 A1).

Bahnson discloses a method for analyzing a cell or cells by suppressing non-biological movement. The method comprises the steps of adding cells in a solution of methyl cellulose having a concentration of approximately 1 to 4% of the total volume of the solution (paragraph 36,37,38,63,71,114) in a plate having between 6 and 9,600 wells (paragraph 114); imaging a first well by visible light tracking (paragraph 11,13,29,67\*,68\*,71,114,117\*,123\*124\*,154\*); taking pictures of a second well (paragraph 145,146); tracking a third well by fluorescence (paragraph 11,13,29,67\*,68\*,71,114, 117\* ,123\*124\*, 154\*); taking a focal stack of a fourth well to review 3d motion (paragraph 11,13,29,67\*,68\*,71,114,117\*,123\*124\*,152\*, 154\*).

Regarding claim 4-11, Bahnson discloses a method for analyzing cells that comprises the steps of imaging on cell in a first well using viable light, imaging the cell in the well by fluorescent light to form a second image; then overlaying the first and the second images (paragraph 123,124\* specifically lines 5-11,139); taking successive fluorescent or visible images over time and analyzing the images to determine cellular performance or overlaying the images and the differences are analyzed to determine cellular performance (paragraph 123,124\* specifically lines 5-11,139\* specifically lines 14-21); taking the differences between the images and analyzing them to produce time related kinetic information on cellular performance (paragraph 18); analyzing the cellular performance of proteins and/or other biological or chemical moieties based on statistical

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or kinetic parameters (paragraph 85); the determination of cellular performance includes parameters such as  $V_{inst(i)}$ ,  $V_{avg-inst(i)}$ ,  $V_{cl}$ ,  $V_{sl}$ ,  $V_{avg}$ , linearity, straightness BCF, etc (paragraph 124, 125, and throughout the specification).

### **Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 703-306-0093. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9311 for regular communications and 703-872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

SPS  
April 3, 2003



  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700